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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

The personal remarks made by the Chairman of the panels established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100) in introducing the reports of the three panels (S/1999/356, annexes I-III) at the consultations of the whole of the Security Council held on 7 April 1999 are circulated herewith (see annex).

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Annex

[Original: English]

Personal remarks by the Chairman of the Iraqi panels, Ambassador Celso Amorim

01. My intention in presenting to you the reports of the three panels is not to make a summary of the texts, which, I believe, speak for themselves. Rather, I thought it might be useful to make some comments of a personal character, more in the sense of my impressions, as Chair, of the discussions in the panels and of the process of elaboration of the reports. I would also like to offer some reflections on how the conclusions might help in shaping a possible renewed approach by the Security Council in relation to Iraq.

02. First of all I would like to stress the importance that each individual report be read as a whole. The reports were conceived bearing in mind the need to answer to the particular mandates the Security Council entrusted to the panels. The assumptions, assessments, recommendations and suggestions contained in the reports constitute an organic corpus, whose real meaning may be missed if one picks up isolated sentences.

03. These reports are the result of intensive discussions of groups of individuals who worked hard to discharge their mandates. I will do my best then to be faithful to the understandings reached within those groups, without eschewing expressing personal views that I formed due to my unique position as Chairman of the three panels.

04. In this respect, I would like to stress that consensus was not sought and reached at the cost of substance. Of course there was the necessary accommodation of different points of view and the learned eye will be able to identify compromise language or read between the lines. It is my opinion that in the three cases the panels managed to present a set of meaningful

recommendations that may contribute to focus the discussions in the Security Council on concrete issues.

05. I would also like to remind you that the three panels worked independently and there was no link – nor could there be any - between the reports during their elaboration. However the Security Council can and perhaps should make appropriate connections between the observations and conclusions of the three reports. Such links may indeed be necessary to allow the Security Council to develop a coherent new approach to the situation.

06. Finally, panel members had it made clear that their mandate implied that they had to work within the framework of existing resolutions. The Security Council clearly is not bound by those limitations.

Panel on disarmament and ongoing monitoring and verification

07. Panel members had in mind the technical nature of the panel's mandate. However, they recognized the political background against which their discussions were taking place, which includes, among other things, the current situation on the ground as well as proposals being discussed by the Security Council. They were also conscious of the political implications that some recommendations might have.

08. The panel did not try to reproduce or summarize other documents. The panel recognized that assessments were made on different occasions by the entities in charge of verification work in Iraq. These assessments, which remain available to all, were the object of consideration by the panel as part of "all existing relevant information".

09. Nevertheless, even if not mandated to proceed to a political assessment of compliance, panel members considered it important to have a broad overview of the work of UN/IAEA in Iraq in order to answer the question I had put to the Security Council and repeated to panelists, namely "while recognizing that there may be disarmament tasks to be carried out, wouldn't it be possible to perform those tasks, with a renewed approach, under a reinforced OMV?".

10. For that purpose, the panel was briefed by experts from UNSCOM and IAEA. The briefings and the discussions that followed concentrated on two aspects:

I) the result of the work done in Iraq in the last eight years (reflected in the paragraphs on achievements of the report). This showed how much was accomplished by the two entities in terms of uncovering and destroying the main elements of Iraq's proscribed weapons programmes;

II) the remaining/unresolved/unclarified or not sufficiently clarified aspects of proscribed weapons programmes. In this respect, there was an implicit, and sometimes explicit, recognition that there are outstanding disarmament issues. However, there were differences in the panel members' perception and understanding of remaining issues, including as regards their relevance to the overall verification process.

11. The panel did not seek to reach agreed conclusions in this regard, mainly because it considered it was not mandated to undertake such an assessment. In any case, even if there were more time to pursue such discussions, a consensus on identifying which are these issues and how important they are would have been very difficult. It is my view that such an exercise would not have been productive for the purposes that led to the establishment of the panel.

12. On the other hand, the report does provide an answer to the question mentioned above relating to the possibility of factoring unresolved issues into a reinforced OMV.

13. The conclusion, from a technical standpoint (which was the panel's perspective) was that such "factoring in" or "integration" is indeed possible, provided appropriate arrangements are made. Without engaging in a detailed technical discussion that seemed premature at that stage, panel members did agree on some parameters of a reinforced OMV, among them full access to locations, individuals and information, re-establishment of baselines, appropriate use of technologies, etc. These parameters are included in paragraph 42 of the report.

14. Panel members emphasized that the net effect of such an integrated approach, which should benefit from synergies and cross-fertilization between disciplines, might be to "enable rapid and effective work towards confirmation of Iraq's disarmament status". In other words, from a technical perspective, such refocusing of the patterns of work would not only be possible, but indeed desirable.

15. The panel also considered that refocusing or "relensing" the approach towards disarmament/ongoing monitoring and verification, without departing from the existing framework of rights and obligations laid down in Security Council resolutions, might offer the opportunity to enlarge the scope of options before the Security Council. Therefore, it can fairly be stated that such a refocusing would not only be technically viable, but might also be politically desirable. The final judgement rests, of course, with the Security Council.

16. The panel also stressed the urgency of finding a solution to the problem posed by the absence of inspectors in Iraq. It was obvious to panel members that "the longer inspection and monitoring activities remain suspended, the more difficult the implementation of SC resolutions becomes". The current absence of inspectors on the ground was seen as substantially increasing the risk that Iraq might try to reconstitute its proscribed weapons programmes. Accordingly, the panelists considered that any threat to the stability of the region that is attributable

to the absence of inspections will of course bring serious damage to the credibility of the UN. Most importantly, the panel concluded that "the status quo is not a practical alternative and recommends that efforts be made with a view to restoring an international inspection regime in Iraq that is effective, rigorous and credible".

17. In essence, the report presents one basic recommendation, namely, that a reinforced OMV be implemented to carry out further the objectives of SC resolutions in Iraq. This can and should be done within the frame of provisions of resolution 715 and the existing OMV plans as well as the other relevant resolutions (687, 707, 1051). The panel has also pointed out that Iraqi cooperation is required for the reconstitution of any regime that we might wish to implement. Effective support by the Council was also deemed essential for any system that is put in place.

18. In presenting these conclusions, the panel discharged itself of the mandate it had been given to devise "how to re-establish an effective disarmament/ongoing monitoring and verification regime in Iraq". The word "how" was frequently highlighted in the discussions. Let me point out, however, that the panel gave a reply exclusively for the technical "how" (to do it). The panel stressed that even the best system would be useless if it were to remain a blueprint on paper only. To be effective, any system has to be deployed on the ground, which is impossible without Iraqi acceptance. How this acceptance will be obtained, or, let's say what is the answer to the political "how", is a task for the Security Council. Nevertheless it is my view that the reply to the technical "how" is not irrelevant to the discussion on the political "how".

19. In parallel to the reply to the central question outlined previously and as part and parcel of the system proposed, some important suggestions were made with regard to organization and methods of work and much time was devoted to this end. These suggestions refer basically to the restructuring the Commission as a collegiate body, some functions it might perform, questions related to recruitment,

training and dealing with information from various sources as well as other practices and procedures. As stated before, the panel examined those adjustments within the existing legal framework, including with regard to nomenclature, without prejudice to any future Security Council decision. Limitations aside, it is my view that these suggestions should not be taken lightly, in spite of the cautious diplomatic – but by no means opaque - language in which they were couched. The panel recommends that the Security Council give due consideration to them and I would strongly encourage the Council to do so.

Panel on the current humanitarian situation

20. The second panel, on humanitarian issues in Iraq, based its assessment of the present living conditions of the Iraqi people on a variety of indicators obtained through a series of documents and briefings. The report of the panel summarizes this quantitative information, while also reflecting certain qualitative aspects that were brought to its attention.

21. The panel did not attempt to substitute or duplicate for the regular reporting by the Secretary-General on the subject, in the context of the 986 humanitarian programme. Its mandate, in fact, did not request it to do so. Instead, the panel decided, in strict conformity with its mandate, to take a broader perspective and sought to identify trends, by comparing the situation in Iraq before the Gulf war, with the aftermath of the war and the present situation. It is understood that the comprehensive sanctions regime is a central element of the whole picture.

22. The panel established a conceptual distinction between deprivations that affect the coping mechanisms of a given society as a result of natural or man-made disasters – which are qualified as matters of humanitarian concern – and other situations. In this context, without ignoring the responsibility of Iraq for the events that led to the present situation, the panel considered that the social and economic

decline of Iraq and its effects on the Iraqi people's living standards cannot be dissociated from the cumulative impact of widespread war damage and prolonged economic sanctions. In the absence of those the situation in Iraq would probably not be treated as a humanitarian one, and most likely would be dealt with, if at all, as a matter for development assistance.

23. Although there could be a margin of error for certain individual data – and this is explicitly admitted in the report - the panel believes that the information received from UN agencies, NGO's and individuals converge to form a coherent picture. In short, as pointed out by UNDP – and quoted in the report – "the country has experienced a shift from relative affluence to massive poverty" in the last decade. Essentially the same evaluation, albeit in different words, was to be found in the submissions by other agencies and bona fide NGOs, such as the ICRC.

24. Present humanitarian efforts authorized through resolution 986 and successive resolutions have made an impact in arresting the decline in malnutrition and health problems, but the situation can only be said to have at best stabilized if one considers the country as a whole. Other indicators continue to deteriorate.

25. The report does not exempt the Government of Iraq from its responsibilities and therefore includes a set of recommendations directed at the Government. At the same time, the panel believes that member States should not shun their collective responsibility in the face of the acute humanitarian needs of the Iraqi people. In this spirit, and within the general framework set by SC resolutions, a number of recommendations have been put forth in section IV of the report which I believe would have a meaningful impact, especially if taken as a package. It should be noted, however - as in the report's final paragraph – that the humanitarian situation of the Iraqi people will continue to be a dire one in the absence of a sustained revival of the Iraqi economy – which in turn cannot be achieved on the basis of international humanitarian efforts alone.

26. I should clarify that some of the recommendations by the panel can be implemented within the present framework of resolutions while others may require adjustments, within the same basic philosophy. The panel did not seek to distinguish explicitly between these two categories. As follow-up action, and once the gist of recommendations is agreed upon, I would suggest that a group of experts might be established to examine certain technical and legal aspects involved in the implementation of some of the recommendations.

Panel on prisoners of war and Kuwaiti property

27. It must be stressed that the panel, mainly for practical, but also for conceptual reasons related to the humanitarian nature of the issue, did not engage in an investigative work of its own. Consequently, it had to work on the basis of information provided during the briefings or by written submissions. Some of the oral briefings were supplemented by documents presented to the panel, as in the case of Kuwait and Saudi Arabia.

28. In order to have a clear picture of the legal framework in which the questions are inserted, it was deemed convenient to have a compilation of relevant SC resolutions and international humanitarian law provisions. This included documents relating to the creation of the Tripartite Commission, which are important for the complete understanding of the issue. In this regard, you will find references to the different terminology used in various documents, which carries different legal implications.

29. It is important to note that, during all its work, the panel had to deal with the information obtained, bearing in mind its confidentiality. Due to the humanitarian nature of the issue, such highly sensitive information was shared on the basis of mutual trust. It also had to face discrepancies in figures provided by the parties involved, including conflicting information relating to the status of the unaccounted

for. Notwithstanding these difficulties, the report of the panel provides the Security Council, I believe for the first time, with a comprehensive compilation of data on both POWs and property.

30. On the question of Kuwaiti property, it was noted that a number of items seized by Iraq during the occupation had been returned through the Secretariat. With reference to some military equipment and to the official archives, however, explanations provided by Iraq were either not fully convincing or totally absent. This fact did not allow the panel to conclude that Iraq has fully complied with its obligation to implement paragraph 2 of Security Council resolution 686. The panel recommended that a focal point in the Secretariat be responsible for updating information concerning items yet to be returned. Based on this data, the Secretary-General would report on progress on the return of property to the Security Council.

31. The issue of prisoners of war, or missing persons, as unanimously affirmed by those heard by the panel, is a humanitarian one that should not be politicized. In this regard, the ICRC role is to be preserved and respected, especially as concerns the limits of its involvement in a process that is seen or might be seen as politicized.

32. The panel recognized that the Security Council should be kept informed of the question of the "persons unaccounted for" (to use the expression preferred by the ICRC). To that effect, it proposed a mechanism by which the Secretary-General would periodically report on the situation. The guidelines of such a report, conceived mainly as a motivational factor, aimed at fostering cooperation among the parties, are contained in paragraphs 50 and 51. The panel also noted that constant pressure arising from too frequent reports or from the political discussion that would almost inevitably follow them might not be helpful in the efforts at effectively bringing to a closure this essentially humanitarian issue.

33. Conscious that this is a very sensitive and complex question, the panel hopes that the considerations of the report as well as the mechanism suggested therein can be received as an inducement for possible solutions. A positive development in this question, apart from immediate and most important effects to the families of the unaccounted for, would have a favourable impact in the confidence-building process, thus allowing for the amelioration of the relationship between the countries of the region and, consequently, for the gradual improvement of the overall geopolitical situation.

CONCLUSIONS

34. For more than a year now, the SC has been grappling with the question of how to maintain a unified stance towards the Iraqi problem. At least on three important occasions Security Council members were able to display such unity: in February 98, when the Memorandum of Understanding, signed by the Secretary-General and the Iraqi Government, was endorsed by Resolution 1154; in the last day of October, when Security Council members expressed their initial views on the comprehensive review; and in November, when the Security Council unanimously condemned Iraq's decision to cease cooperation with UNSCOM and continue to restrict the work of IAEA (Res. 1205). On other occasions, unity was not so clear. It was certainly absent following the episodes of December last.

35. The constitution of the panels reflected a desire of Security Council members to try to unblock discussions in the Council. At that time, the Council was engaged in discussing options which would lead to the full implementation of all relevant SC resolutions. Proposals had been made to that effect but consensus seemed elusive. The panels' reports may offer the Security Council an opportunity to focus on concrete options to move forward and, hopefully, to find its way back towards unity.

36. The first panel concluded that, after eight years in Iraq, much has been achieved, while recognizing the existence of unresolved issues. Reference was made to a possible "point of impasse" in the further investigation of these issues under the current procedures which might correspond to an apparent diminishing return in recent years, whatever the causes.

37. Comprehensive sanctions have also been in place for eight years, and the humanitarian situation in Iraq is a bleak one, as illustrated by the second panel. In the present circumstances, the picture is one of no inspections, no monitoring, and, therefore, no guarantee that peace and security in the region may not come under threat, including from weapons of mass destruction. Other questions remain unresolved, notably the question of those "unaccounted for" (whether they are POW or missing people). In short, the objectives of Security Council resolutions are not being fulfilled. This leads us to the question whether a changed or new approach might not contribute to achieve the objectives set forth in SC resolutions.

38. The recommendations contained in the reports are important and, taken as a package, may offer solutions to some pressing problems. However, and this is especially true of the panel on disarmament/ongoing monitoring and verification, they have to be seen as tools. And tools are only helpful if they are put into use.

39. In its last paragraph, the report on disarmament/ongoing monitoring and verification sends back to the Security Council the question this body had presented to the panel, although in a redefined manner: "how, from a political point of view, to implement the reinforced OMV?". It had clearly pointed out in a previous paragraph that the reinforced OMV system, in itself, was not conceived as an enticement for Iraqi cooperation. Therefore, inducements or enticements, if they are to be sought, have to be looked for elsewhere. I have already referred to the possible links between the observations and conclusions of the different reports and the clue for making Iraq accept a reinforced OMV may lie precisely in those links.

40. The report of the first panel recognizes that outstanding disarmament issues remain. On the other hand, as alluded to during the discussions, there may be an inherent difficulty of ever reaching the point in which the Security Council will have 100% certainty that "Iraq has completed all actions contemplated in paragraphs 8 to 13" of resolution 687, as stipulated in paragraph 22 of that resolution. However, as we are all aware, paragraph 21 of resolution 687 may offer enough flexibility, if the Security Council so decides, for a new approach. An approach that provides for an acceptable level of assurance in relation to proscribed weapons, with effective inspections under a reinforced OMV, and at the same time permits substantively to improve the living conditions of the Iraqi people, bringing it into some degree of normalcy, while other objectives such as the ones of panel 3 continue to be pursued.

41. Finally, the question of how to engage Iraq has to be addressed, "sooner rather than later", as one of the reports points out. This will certainly not be an easy task, given the attitude of Iraqi authorities, particularly after the events of December 1998 and the incidents of a military nature that continue to occur. As Chairman, I had to deal with the Iraqi position of not being concerned by the panels, which did not allow for a formal participation of Iraq in their work. Apart form anything that the Security Council may devise, possibly making use of links I alluded to, it is my personal view that an effort of "healing diplomacy" will have to be made. For that purpose, the assistance of the Secretary-General may be of great value.

42. To sum up, the status quo is not a viable option. The panels were an honest and fair attempt to offer concrete recommendations on which the Security Council can focus in dealing with the Iraqi question. These recommendations, taken globally, may provide answers to pressing problems. But a lasting solution to the question of Iraq goes beyond what was possible to suggest within the panels' terms of reference. As said before, looking at the reports as a whole, including the possible linkages between them – something the panels could not do – the Council

may come with more comprehensive solutions, as part of a new or changed approach in pursuing the goals of its resolutions. By doing so, the Council may not only improve the chances of a lasting peace in that particular region, but also rediscover its unity, while enhancing its credibility as the body with the primary responsibility for maintaining peace and security in the world at large.